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Motor Vehicles

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Motor Vehicles

Motor Vehicles; corporation guilty pleas

Penal Code §§1018, 1396, 1427 (amended).

SB 937 (Biddle); STATS 1973, Ch 718

Support: California Trucking Association

Chapter 718 has amended Sections 1018, 1396, and 1427 of the Penal Code to provide that a corporation may appear by its counsel, president, vice president, secretary, or managing agent for the purpose of entering a plea of guilty on a misdemeanor charge arising from the operation of motor vehicles or infractions arising from such operation. Prior to this enactment, the Penal Code only provided for a plea of guilty to be entered by counsel.

See Generally:

- 1) CAL. PEN. CODE §1390 (service of summons on a corporation).

Motor Vehicles; court reporting of traffic violations

Health and Safety Code §13002 (amended); Penal Code §§374b, 374e (amended); Public Resources Code §5008.7 (amended); Vehicle Code §1803 (amended).

SB 936 (Biddle); STATS 1973, Ch 592

Support: Department of Motor Vehicles

Chapter 592 eliminates the requirement that the county clerk, or judge if there is no clerk, report to the Department of Motor Vehicles convictions for littering, throwing burning objects on highways, or parking vehicles on public grounds under specified provisions of the Health and Safety Code, the Penal Code, and the Public Resources Code. This will have the effect of withdrawing from the Department of Motor Vehicles the ability to refuse to issue or renew a driver's license to a person who has failed to pay a fine imposed for one of these convictions [See CAL. VEHICLE CODE §12807(d)]. Chapter 592 also appears to remove prior convictions for the above offenses from a judge's consideration in sentencing Vehicle Code violators. Since these violations will no longer be reported to the Department

of Motor Vehicles, the department will be unable to furnish them to the judge for his consideration [See, for example, CAL. VEHICLE CODE §13209].

See Generally:

- 1) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 370 (1971).

Motor Vehicles; drunk driving penalties

Vehicle Code §23102.2 (repealed); §23102.2 (new); §§13352, 23102, 23105 (amended).

SB 1268 (Deukmejian); STATS 1973, Ch 1128

Support: California Highway Patrol

Section 13352 of the Vehicle Code provides that the Department of Motor Vehicles shall immediately suspend or revoke any person's driver's license upon his conviction (or finding in juvenile court) of driving while: (1) under the influence of an intoxicating liquor or any drug; (2) under the combined influence of an intoxicating liquor or any drug; or (3) under the influence of any drug while driving on other than a highway. Subdivision (c) of this section has been amended to provide that upon a second conviction or finding within five years (as opposed to seven years as previously specified) the driving privilege shall be suspended for one year and not reinstated unless and until the person gives proof of his ability to respond in damages pursuant to Section 16430. Subdivision (e) has been amended to provide that upon a third or subsequent conviction or finding within seven years (as opposed to ten years as previously specified) the driving privilege shall be revoked and not reinstated for *three* years and until the person proves his ability to respond in damages.

Section 23102(c), which specifies penalties for driving under the influence of an intoxicating liquor, or under the combined influence of an intoxicating liquor and any drug, has been amended to provide that a first conviction is punishable by imprisonment of not less than 48 hours nor more than 6 months in the county jail or a fine of \$250 to \$500, or both. Previously, the minimum jail term was 30 days. Additionally, this subdivision has been amended to provide that if the person convicted participates and completes a driver's improvement program or treatment program for persons who are habitual users of alcohol, or both, his fine shall not be less than \$150 nor more than \$500, or imprisonment in the county jail for not less than 48 hours nor more than 6 months, or both. Subdivision (d) has been

amended to provide that punishment for a second or subsequent conviction within five years (previously it was within seven years) shall be imprisonment in the county jail for not less than 48 hours (as opposed to not less than 30 days as previously specified) nor more than 6 months or a \$250 to \$1000 fine, or both. Additionally, several subdivisions have been added to Section 23102 to provide that in no case can a court absolve a person convicted of a second or subsequent violation within five years from spending at least 48 hours in jail and paying a fine of at least \$250 unless justice demands an exception. In that case, the court may strike the prior conviction but must specify the reasons for doing so. Also, the court may allow a person convicted under this section to serve his jail sentence on days other than those of his regular employment.

Section 23102.2 has been added to the Vehicle Code to provide that in any proceedings to have a prior conviction of a violation of Section 23102(a), 23102(b), 23105(a), 23105(b), or 23105(c) declared invalid on constitutional grounds, the defendant must state in writing how he was deprived of his constitutional rights. This statement must be filed with the court clerk and a copy served on the district attorney at least five days before a hearing thereon. Prior to trying any pending criminal action against the defendant, the court must hold a hearing, outside the presence of the jury, to determine the validity of the defendant's prior conviction. In such a hearing, the burden of proof beyond a reasonable doubt remains on the prosecution. Once the prosecution produces evidence to show that the defendant was convicted, the defendant may proceed to show that his constitutional rights were violated. If the defendant successfully proves a constitutional violation, the prosecution then has a chance to produce rebuttal evidence. In any case, the court must make a decision on the basis of the evidence produced as to whether or not to strike the prior conviction from the accusatory pleading.

Section 23105, which deals with driving while under the influence of drugs, has been amended in conformity to the changes in Section 23102.

Motor Vehicles; equipment rental

Vehicle Code §24010 (amended).

AB 323 (Townsend); STATS 1973, Ch 88

Support: California Peace Officers' Association; California Highway Patrol

Chapter 88 has amended Section 24010 of the Vehicle Code to prohibit the rental of *any vehicle* for 30 days or less, unless all equipment required by the Vehicle Code and regulations adopted thereunder for the operation of such vehicle on the highway has been provided or offered to the lessee for his use. Prior to this amendment, Section 24010 placed such requirements only upon lessors of utility trailers, camp trailers, or trailer coaches that were to be used in combination with a passenger vehicle. Violation of this section constitutes an infraction (§40000.1) punishable upon a first conviction by a fine not to exceed \$50 (§42001).

See Generally:

- 1) CAL. VEHICLE CODE §24000 *et seq.* (equipment regulations).

Motor Vehicles; financial responsibility

Vehicle Code §16372 (repealed).

AB 1362 (Antonovich); STATS 1973, Ch 436

Support: Department of Motor Vehicles

Chapter 436 has repealed Section 16372 of the Vehicle Code, which provided that if an uninsured driver was in a motor vehicle accident, a discharge in bankruptcy following the rendering of judgment could not relieve the judgment debtor from the financial responsibility laws of Chapter 2 (commencing with §16250) (suspensions following unsatisfied judgments) and Chapter 3 (commencing with §16430) (proof of ability to respond in damages) of the Vehicle Code. The repeal of Section 16372 is in response to the United States Supreme Court decision of *Perez v. Campbell* [402 U.S. 637 (1971)], in which the Court declared unconstitutional part of an Arizona statute which provided for the suspension of an uninsured judgment debtor's license and registration, notwithstanding discharge in bankruptcy, until such time as the judgment was satisfied. The Court held that this provision was in direct conflict with Section 17 of the Bankruptcy Act [11 U.S.C. §1 *et seq.* (1971)] and, therefore, unconstitutional under the supremacy clause [U.S. CONST. art. VI]. Section 17 of the Bankruptcy Act provides that all judgments not specified by the section as exempt are fully discharged in bankruptcy.

See Generally:

- 1) *Perez v. Campbell*, 402 U.S. 637 (1971); *Weaver v. O'Grady*, 350 F. Supp. 403 (S.D. Ohio 1972).
- 2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 563, 565 (1973).
- 3) Annot., 8 A.L.R.3d 388 (1966); Annot., 35 A.L.R.2d 1011 (1954) (financial responsibility laws).

Motor Vehicles; juvenile drivers' licenses

Vehicle Code §13203 (amended); Welfare and Institutions Code §564 (amended).

AB 848 (McAlister); STATS 1973, Ch 903

Support: Santa Clara County Juvenile Probation Department

Section 13203 of the Vehicle Code and Section 564 of the Welfare and Institutions Code have been amended to provide that the driving privilege of a minor who admits or is convicted of any traffic violation can be suspended or restricted for up to 60 days. Prior to amendment, minors were subject to suspension or restriction only as provided in the Vehicle Code.

COMMENT

Prior to amendment in 1972, the driver's license of a minor could be suspended for up to 90 days for any traffic violation. In 1972 Section 564 of the Welfare and Institutions Code was amended by Chapter 1196 to delete this 90-day suspension provision and to provide that minors would be subject to the provisions of the Vehicle Code [S.B. 1226, CAL. STATS. 1972, c. 1196, at 2318]. In addition, the legislature amended numerous other Vehicle Code sections to make juveniles subject to the same provisions as adults with regard to suspension of their driving privilege [A.B. 1819, CAL. STATS. 1972, c. 755, at 1349]. Both measures were supported by the Department of Motor Vehicles. This year's amendment reinstates the authority for juvenile court judges, referees, or traffic hearing officers to suspend the driver's license of a minor for any offense, regardless of whether an adult's license could be suspended for the same offense.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 400, 547 (1973).

Motor Vehicles; juvenile violators

Vehicle Code §13355.5 (repealed); Welfare and Institutions Code §564 (amended).

AB 617 (Murphy); STATS 1973, Ch 257

(Effective July 12, 1973)

Support: Department of Motor Vehicles

Chapter 257 has repealed Section 13355.5 of the Vehicle Code, which provided for a one-year suspension of a juvenile's license upon

the recommendation of the judge of a juvenile court. Under Section 13355.5, the license could be suspended when the juvenile was found to have committed the offense of possession of marijuana or any other offense defined in Division 10 (commencing with §11000) of the Health and Safety Code (narcotics), punishable as a felony, while the juvenile was operating a motor vehicle. Juveniles are still subject to Section 13202 of the Vehicle Code which provides that a court may suspend or revoke the license of any person upon conviction of any narcotics offense defined in Division 10 of the Health and Safety Code, when a motor vehicle is involved.

COMMENT

A similar bill was passed last year [A.B. 1819, CAL. STATS. 1972, c. 755, §4, at 1349], but the subsequent enactment of Chapter 1407 inadvertently restored Section 13355.5 [A.B. 192, CAL. STATS. 1972, c. 1407, §12, at 3045].

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 378, 547 (1973).

Motor Vehicles; license revocation—90-day review period

Vehicle Code §14401 (new).

AB 1834 (Maddy); STATS 1973, Ch 628

Support: Department of Motor Vehicles

Section 14400 of the Vehicle Code provides that court review of an order refusing, canceling, suspending, or revoking a driver's license may be had in any court of competent jurisdiction. Section 14401 has been added to provide that any action brought to review such order must be started within 90 days from the date a person receives notice of the order. Additionally, the Department of Motor Vehicles must give the person written notice of his right to review by a court upon final completion of all administrative appeals.

See Generally:

- 1) CAL. GOV'T CODE §11523 (judicial review of administrative proceedings).

Motor Vehicles; odometers

Vehicle Code §§11713, 28051 (amended).

AB 392 (Townsend); STATS 1973, Ch 774

(Effective September 25, 1973)

Chapter 774 has amended Section 11713 of the Vehicle Code to

provide that it is unlawful for a licensed dealer, manufacturer, or transporter of motor vehicles to violate *any* of the provisions of Article 10 (commencing with §28050) of the Vehicle Code. Article 10 includes Section 28050 (prohibiting a person from advertising for sale, selling, using, or installing any device which causes an odometer to register untrue mileage), Section 28050.5 (prohibiting the operation of a motor vehicle with a nonfunctional odometer), Section 28051 (prohibiting the alteration of the odometer reading of any motor vehicle), Section 28051.5 (prohibiting a person from advertising for sale, selling, using, or installing any device designed to turn back or reset an odometer), Section 28052 (specifying the odometer reading which is to be used for a mileage warranty), and Section 28053 (specifying the information which must be reported by a person repairing an odometer). Prior to amendment, Section 11713 only prohibited a licensed dealer, manufacturer, or transporter of motor vehicles from violating Sections 28050 and 28051.

Chapter 774 has amended Section 28051 to prohibit any person from disconnecting, turning back, *advancing*, or resetting the odometer of any motor vehicle with the intent to *alter* the number of miles on the gauge. Prior to this amendment, Section 28051 was concerned only with the reduction of the mileage reading and did not apply to alterations in general.

See Generally:

- 1) *People v. Ross*, 25 Cal. App. 3d 190, 100 Cal. Rptr. 703 (1972) (grand theft prosecution of auto dealer who violated §28051); *Laczko v. Jules Meyers, Inc.*, 276 Cal. App. 2d 293, 80 Cal. Rptr. 798 (1969) (violation of §28051 as a basis for fraud action).
- 2) CAL. VEHICLE CODE §§40000.1, 42002 (violation as a misdemeanor).
- 3) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 264 (1973).
- 4) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 297 (1972).

Motor Vehicles; parking violations

Vehicle Code §41103 (amended).

AB 31 (Z'berg); STATS 1973, Ch 522

Section 41103 of the Vehicle Code specifies the procedure required for giving notice of a parking violation to the registered owner, lessee, or renter of a motor vehicle. Before a warrant of arrest shall issue, two separate notices of the alleged violation must be given to the person charged—one attached to the vehicle at the time of the violation, and the other served subsequently as a reminder of the obligation to answer the charges. This second notice must contain all the informa-

tion set forth in the first (time and place of violation, code section or ordinance violated, and time and place to appear), and a warning that, unless such person appears in court within 10 days after service of such notice, a warrant or citation to appear will be issued.

Chapter 522 has amended Section 41103 to require additionally that the second notice contain: (1) an affidavit of nonownership; (2) information as to what constitutes nonownership; (3) information as to the effect of executing the affidavit; and (4) instructions for mailing or returning the affidavit to the court. Upon receipt of evidence satisfactory to the court that the person charged with the parking violation has sold and transferred possession of the vehicle prior to the date of the alleged violation, the court shall obtain verification from the Department of Motor Vehicles that the person charged has complied with the requirements of Section 5602 and, if the person has complied with such requirements, charges against the person shall be dismissed. Section 5602 sets forth the requirements for releasing the owner from civil liability upon the transfer of title and possession of a vehicle.

See Generally:

- 1) CAL. VEHICLE CODE §41102 (presumption that registered owner is responsible for parking violations).
- 2) *Nuss v. Pacht*, 22 Cal. App. 3d 553, 99 Cal. Rptr. 460 (1971) (strict compliance with §5602 is required for release from civil liability by transferring owner); *Laureano v. Christensen*, 18 Cal. App. 3d 515, 95 Cal. Rptr. 872 (1971).
- 3) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 379 (1972).
- 4) 2 OPS. ATT'Y GEN. 208 (1943) (computing period in which to appear).

Motor Vehicles; penalties for vehicular violations

Vehicle Code §§12810.5, 40000.28 (new); §§40000.3,, 40000.7, 40000.15, 40000.25, 42001 (amended).

SB 620 (Song); STATS 1973, Ch 1162

Support: Judicial Council; Lawyers and Clients for Good Government of Los Angeles County; California District Attorneys' and Peace Officers' Association

SB 914 (Coombs); STATS 1973, Ch 865

Section 40000.28 has been added to the Vehicle Code to provide that any offense which would otherwise be an infraction is a misdemeanor if the defendant has been convicted of three or more violations of this code, or any local ordinance adopted pursuant thereto, within the 12-month period immediately preceding the commission of the offense, and such prior convictions are admitted by the defendant or

alleged in the accusatory pleading. A bail forfeiture is a conviction for the purposes of this section.

Section 12810 provides, among other things, that any person whose driving record shows a violation point count of four or more points in one year, six or more points in two years, or eight or more points in three years, is *prima facie* presumed to be a negligent driver. Section 12810.5 has been added to provide that notwithstanding Section 12810, any person who drives more than 25,000 miles per year shall be *prima facie* presumed to be a negligent driver only if his driving record shows a violation point count of six or more points in twelve months, eight or more points in twenty-four months, or ten or more points in thirty-six months.

Sections 40000.15 and 40000.25 have been amended to eliminate the misdemeanor penalties for violations of specified sections of the Vehicle Code. Violations of these sections will now be infractions pursuant to Section 40000.1, which provides that any violation of the code is an infraction unless otherwise specified. Additionally, Section 40000.3 has been amended to provide that a willful violation of a court order which is punishable as contempt pursuant to Section 42003(a) (willful violation of a court order commanding the defendant to appear in court) is not an infraction. Prior to amendment, this section only provided that violations expressly declared to be felonies, or public offenses which are punishable as either misdemeanors or felonies were not infractions.

Chapter 914 has amended Section 40000.7 to provide misdemeanor penalties for the following code violations which were previously classified as infractions: Section 5753 (relating to delivery by the transferor to the transferee of certificates of ownership and registration) when committed by a dealer or any person who had been a dealer within the preceding 12 months; and Section 8803 (relating to the return of canceled, suspended, or revoked documents and license plates of a dealer, manufacturer, transporter, dismantler, or salesman).

See Generally:

- 1) CAL. PEN. CODE §19(c) (definition of infraction).
- 2) CAL. VEHICLE CODE §12810 (definition of point count), §40000.11 (specifies offenses which constitute a misdemeanor).

Motor Vehicles; speed traps

Vehicle Code §40802 (amended).

AB 1230 (Fenton); STATS 1973, Ch 203
(Effective July 9, 1973)

Section 40801 of the Vehicle Code provides that a speed trap shall neither be used in arresting a person for an alleged violation of the Vehicle Code nor in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this Code. Section 40802 of the Vehicle Code, as amended in 1972 [See 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 553 (1973)], defines "speed trap" as: (1) a particular section of highway of a known distance and with marked boundaries such that the speed of a vehicle may be calculated by securing the time/distance factor; or (2) a particular section of highway with a prima facie speed limit established pursuant to Section 22352(b)(1), 22354, 22358, or 22358.3, which speed limit has not been justified by an engineering and traffic survey conducted within five years prior to the alleged violation, and where enforcement involves the use of radar or other electronic devices.

Chapter 203 has amended Section 40802(2) by including within the definition of "speed trap" any section of highway with a prima facie speed limit provided by the Vehicle Code or local ordinance or established pursuant to Section 22357 (increase of local limits), rather than limiting the definition to highways described in subdivision (2) above. This enactment does not constitute a change in, but is declaratory of, existing law [A.B. 1230, CAL. STATS. 1973, c. 203, §2].

COMMENT

Apparently some communities attempted to get around the definition of speed trap contained in Section 40802 by claiming that it did not apply to streets which used the state-prescribed 25 miles per hour speed limit established in Section 22352 of the Vehicle Code [Assemblyman Jack R. Fenton, Press Release, Apr. 12, 1973]. Such communities claimed that Section 40802 only applied to highways on which the local authorities either raised or lowered the state-prescribed speed limit, but that it was inapplicable where the 25 miles per hour limit was unchanged and controlling [Interview with Rick Yanes, Legislative Aide to Assemblyman Jack R. Fenton, Sacramento, Calif., July 26, 1973]. Chapter 203 has clearly made the definition of speed traps applicable to all business and residential streets, including those where the state-prescribed speed of 25 miles per hour is used.

See Generally:

- 1) *People v. Johnson*, 29 Cal. App. 3d Supp. 1, 105 Cal. Rptr. 212 (1972) (speed trap while using VASCAR).
- 2) CAL. VEHICLE CODE §§22357, 22358 (increase and decrease of local limits), §§40801, 40803-40805 (speed trap).
- 3) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 553 (1973).
- 4) 52 OPS. ATT'Y GEN. 231 (1969) (admissibility of speed evidence obtained by use of VASCAR).

Motor Vehicles; vehicle storage fees

Vehicle Code §10652.5 (new).

AB 1835 (Maddy); STATS 1973, Ch 911

Section 10652.5 has been added to the Vehicle Code to provide that whenever the name and address of the legal owner of a motor vehicle is known, or may be ascertained from the registration records in the vehicle or from the records of the Department of Motor Vehicles, no fee or service charge may be imposed upon the legal owner for the parking and storage of the motor vehicle for the period commencing with the sixteenth day of possession and continuing until written notice by certified mail with return receipt requested is sent to the legal owner by the person in possession of the motor vehicle.

Section 10652.5 additionally specifies that the costs of notifying the legal owner may be charged as part of the storage fee when the motor vehicle has been stored for an indefinite period of time and notice is given no sooner than the third day of possession. These provisions shall also apply if the legal owner refuses to claim possession of the motor vehicle.

Section 10652.5 is not applicable to any motor vehicle stored by a levying officer acting under the authority of judicial process. Furthermore, this section shall not apply to any motor vehicle which has been removed from a highway, or public or private property, by a law enforcement officer or employee of the state pursuant to Sections 22852, 22853, and 22854 of the Vehicle Code, if the legal owner is in fact notified by the law enforcement officer or employee of the state or by the Department of Justice.

See Generally:

- 1) CAL. VEHICLE CODE §370 (legal owner defined).